

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

CIVIL ACTION NO. 05-30022-KPN

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|-----------------------------------|---|
| ALL STATES ASHPALT, INC. AND |) |
| NEW ENGLAND EMULSIONS CORP., |) |
| Plaintiffs, |) |
| |) |
| v. |) |
| |) |
| FIREMAN’S FUND INSURANCE COMPANY, |) |
| Defendant. |) |

ANSWER

Now comes Defendant, Fireman’s Fund Insurance Company (hereinafter “Defendant” and/or “Fireman’s Fund”), by and through undersigned counsel, and answers the Plaintiffs’ Complaint as follows.

1. Defendant denies the allegations contained in this paragraph of Plaintiffs’ Complaint.

PARTIES, JURISDICTION AND VENUE

2. Defendant is without knowledge sufficient to form a belief as to the allegations contained in this paragraph of Plaintiffs’ Complaint and therefore denies the allegations contained in said paragraph.

3. Defendant is without knowledge sufficient to form a belief as to the allegations contained in this paragraph of Plaintiffs’ Complaint and therefore denies the allegations contained in said paragraph.

4. Defendant admits the allegations contained in this paragraph of Plaintiffs’ Complaint.

5. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

6. Defendant admits the allegations contained in this paragraph of Plaintiffs' Complaint.

7. Defendant admits the allegations contained in this paragraph of Plaintiffs' Complaint.

ALLEGED FACTS

8. Defendant admits it issued a policy of insurance and further admits that the policy speaks for itself. Defendant denies all other allegations contained in this paragraph of Plaintiffs' Complaint.

9. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

10. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

11. Defendant admits it received notice of Plaintiffs' alleged property loss and otherwise denies the allegations contained in this paragraph of Plaintiffs' Complaint.

12. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

13. Defendant admits it declined coverage under its insurance policy and otherwise denies the allegations contained in this paragraph of Plaintiffs' Complaint.

14. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

15. Defendant admits receipt of the letter from Plaintiffs' counsel alleged in this paragraph of Plaintiffs' Complaint. Defendant otherwise denies the allegations contained in this paragraph of Plaintiffs' Complaint and denies the allegations made in the letter from Plaintiffs' counsel.

16. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

17. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

18. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

COUNT I

19. Defendant restates and reavers its responses to paragraphs 1 through 18 of the Complaint as if set forth in full here.

20. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

21. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

COUNT II

22. Defendant restates and reavers its responses to paragraphs 1 through 21 of the Complaint as if set forth in full here.

23. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

24. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

25. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

COUNT III

26. Defendant restates and reavers its responses to paragraphs 1 through 25 of the Complaint as if set forth in full here.

27. Defendant admits the allegations contained in this paragraph of Plaintiffs' Complaint.

28. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

29. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

COUNT IV

30. Defendant restates and reavers its responses to paragraphs 1 through 29 of the Complaint as if set forth in full here.

31. Defendant admits the allegations contained in this paragraph of Plaintiffs' Complaint.

32. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

33. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

34. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

COUNT V

35. Defendant restates and reavers its responses to paragraphs 1 through 34 of the Complaint as if set forth in full here.

36. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs fail to allege fraud with sufficient particularity.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs fail to allege malice sufficient to justify an award of punitive damages.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs fail to allege reasonable reliance upon any representation by Defendant.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs waived any claims they have or may have had against the Defendant.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs are estopped from pursuing any claim against the Defendant.

SEVENTH AFFIRMATIVE DEFENSE

The policy of insurance issued by Defendant specifically excludes the risks upon which Plaintiffs make their claims.

EIGHTH AFFIRMATIVE DEFENSE

Liability for Plaintiffs' claims is the responsibility of third parties for which Defendant is not responsible or liable.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred under the doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' fail to allege the elements of their deceit claim with requisite particularity.

ELEVENTH AFFIRMATIVE DEFENSE

An award of punitive damages would violate the United States Constitution.

WHEREFORE, the Defendant, Fireman's Fund Insurance Company, respectfully requests the court enter judgment dismissing Plaintiffs' Complaint and awarding it all costs, interest and reasonable attorney's fees incurred in this action and any all other relief the court deems appropriate.

Respectfully submitted,
The Defendant,
Fireman's Fund Insurance Company,
By its attorney,

Dated: _____

/s/
Robert W. Harrington, BBO #223080
Law Offices of Robert W. Harrington
One Washington Mall
Boston, Massachusetts 02108
(617) 248-0800

CERTIFICATE OF SERVICE

I, Robert W. Harrington, hereby certify that on this date I served a true copy of the foregoing document upon all counsel of record by first-class mail, postage prepaid.

Dated: 3/22/05

/s/
Robert W. Harrington